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26 In Case Number CV 06 05411 SBA (Ballard)

27 \*Additional Counsel on Following Page

28 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

29 BARRY SMITH and MICHAEL  
30 WIGGINS, individually, and on behalf of all  
31 others similarly situated,

32 Plaintiff,

33 vs.

34 WAL-MART STORES, INC., a Delaware  
35 Corporation and DOES One through  
36 Twenty-Five, inclusive,

37 Defendants.

Case No. C-06-02069 SBA  
and CV-06-05411 SBA

**STIPULATION AND ORDER TO  
REMOVE RELATED CASES FROM  
COURT-SPONSORED MEDIATION  
PROGRAM AND REFER TO  
PRIVATE MEDIATION**

STIPULATION AND ORDER TO REMOVE RELATED CASES FROM COURT-SPONSORED  
MEDIATION PROGRAM AND REFER TO PRIVATE MEDIATION  
Case No. C 06 02069 SBA and CV 06 05411 SBA

1 DANTON BALLARD and  
2 NATHAN LYONS, individually and on  
Behalf of all others similarly situated,

3 Plaintiffs,

4 vs.

5 WAL-MART STORES, INC., a Delaware  
6 Corporation; and DOES 1 through 20,  
inclusive,

7 Defendants.

8  
9 **ADDITIONAL PLAINTIFFS' COUNSEL**

10 **Smith vs. Wal-Mart**  
11 **C 06 020690 SBA**

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19 **Ballard vs. Wal-Mart**  
20 **CV 06 05411 SBA**

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1 Plaintiffs Barry Smith, Michael Wiggins, Danton Ballard and Nathan Lyons (collectively  
 2 the "Plaintiffs") and Defendant Wal-Mart Stores, Inc ("Defendant") (collectively "the Parties"),  
 3 through their respective counsel, hereby stipulate as follows:

4 WHEREAS, the action entitled *Barry Smith and Michael Wiggins v. Wal-Mart Stores,*  
 5 *Inc* , Case No. CV 06-02069 SBA ("the Smith action") was referred to mediation through the  
 6 Court's Alternative Dispute Resolution Program on or about September 14, 2006, and a mediator  
 7 was appointed on or about October 13, 2006.

8 WHEREAS, the Court ordered the case of *Danton Ballard and Nathan Lyons v. Wal-*  
 9 *Mart Stores, Inc* , Case No. CV 06-3790 ("the Ballard action"), related to the Smith action on or  
 10 about September 28, 2006

11 WHEREAS, the Parties have elected to utilize private mediation with Mark Rudy in both  
 12 the Smith and Ballard actions and have agreed to mediate these two related cases together.

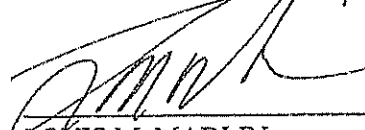
13 WHEREAS, the Parties wish the Smith and Ballard cases be removed from the Court-  
 14 sponsored mediation program and request referral to private mediation.

15 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE AS  
 16 FOLLOWS:

- 17 1. That the Smith and Ballard actions be mediated together with the same mediator;
- 18 2. That the Smith and Ballard actions should be removed from the court-sponsored  
 19 mediation program; and
- 20 2. That the Smith and Ballard action be referred to private mediation.

21 Dated: November 29, 2006

MARLIN & SALTZMAN

  
 LOUIS M. MARLIN  
 Attorneys for Plaintiffs  
 DANTON BALLARD and NATHAN  
 LYONS

1 Dated: November 29, 2006

BAILEY PINNEY PC

  
BONNIE R. MAC FARLANE

Attorneys for Plaintiffs

BARRY SMITH and MICHAEL WIGGINS

2  
3  
4  
5  
6 Dated: November 29, 2006

LAFAYETTE & KUMAGAI LLP

  
SUSAN T. KUMAGAI

Attorneys for Defendant


WAL-MART STORES, INC.

**ORDER**

The foregoing stipulation having been entered, and good cause appearing, it is ORDERED that the related cases of *Barry Smith and Michael Wiggins v. Wal-Mart Stores, Inc.*, Case No. CV 06-02069 and *Danton Ballard and Nathan Lyons v. Wal-Mart Stores, Inc.*, Case No. CV 06-3790, be removed from the Court-sponsored mediation program and are referred to private mediation.

IT IS SO ORDERED.

DATE: 12-4, 2006

  
HONORABLE SAUNDRA B. ARMSTRONG  
UNITED STATES DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served electronically on November 29, 2006, on counsel of record in compliance with Federal Rule 5, Local Rule 5.6 and General Order 45, by use of the Court's ECF system.

/s/ Susan T. Kumagai  
SUSAN T. KUMAGAI